Supreme Court, U.S.
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19 (1) No.

In the
Supreme Court of the United States

Christopher M. Torzala,
Petitioner-Appellant,
v.
United States of America,
Respondent-Appellee

On Petition for Writ of Certiorari
to the
United States Court of Appeals
for the
Seventh Circuit
No. 06-2972

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QUESTIONS PRESENTED

Whether Chief Judge Randa ("Randa" hereinafter) gave Christopher M. Torzala ("Christ" hereinafter) a proper Habeas Corpus hearing when all he did was assert that an improvident guilty plea constituted waiver of all right to such hearing.

Whether Christ committed the federal crime of obstruction of justice in violation of 18USC1503 by expressing a different opinion from FBI Agent Sparacino with whom he was chatting.

Whether Christ obstructed a grand jury investigation in the absence of there being any such grand jury sitting or investigating anything relevant to him.

Whether defense attorney Franklyn Gimbel ("Gimbel" hereinafter) provided constitutionally adequate representation by hood-winking his client Christ into pleading guilty to a crime which Christ did not commit, misrepresenting the consequences of Christ's plea agreement, misrepresenting the conduct in which Christ could engage pending sentencing so that the client's sentence is enhanced therefor, and assuming role of prosecutor at the sentencing hearing so that Christ's sentence is aggravated thereby.

Whether Randa could consider aggravating factors that had not been agreed without violating the *Shepard v. U.S.*, 544 US 13(2005) adjunct to the 6th Amendment right to trial by jury.

Whether Christ should be bound by a plea agreement from which the Government ("US" hereinafter) had backed out, thus abrogating the benefit of Christ's bargain.

Whether affirmance of Randa's dismissal by 7th Circuit Court of Appeals' Judge Ann Williams ("Williams" hereinafter) may be sustained on the false

premise that Christ did not assert "actual innocence," when there were at least 23 recitations of it, and on a fraudulently induced and accepted improvident plea to a non-crime deemed to waive all his rights.

LIST OF PARTIES

The Parties to this Petition for Writ of Certiorari are Christopher M. Torzala ("Christ") and the United States of America ("US"). Accordingly, appropriate service has been made upon the Solicitor General as required by Supreme Court Rule 29.4.(a) as well as upon Stephen Biscukic, the United States Attorney for the Eastern District of Wisconsin ("Biskupic" hereinafter.

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PETITION FOR WRIT OF CERTIORARI

Christ petitions the Supreme Court for a Writ of Certiorari to reverse the Opinion of the 7th Circuit Court of Appeals, 545F.3d517(7th Cir. 2008), rendered by Circuit Judge Williams, affirming Chief Judge Randa's denial of writ pursuant to 28USC2255.

0PINIONS BELOW

Appeal to the 7th Circuit Court of Appeals was from a denial of relief from Christ's 2255 constitutional rights violations, including prosecution for conduct which is not a federal crime, constitutionally inadequate legal representation, sentencing based on aggravating factors which were not agreed in the plea agreement, and not holding a required evidentiary hearing.

JURISDICTION

The Supreme Court has jurisdiction pursuant to Article III of the Constitution and 28USC1254(1)resulting final adverse decisions of the 7th Circuit in *Torzala v. US*, 545F.3d517(7th Cir. 2008). The 7th Circuit had jurisdiction pursuant to 28USC§§1291 and 2253. The District Court for the Eastern District of Wisconsin had jurisdiction pursuant to 28USC2255.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional provisions involved are the 5th, 6th, and 7th Amendments; Statutory provisions 18USC922(g), 18USC1001, 18USC1503, 28USC1291, 28USC2243,28USC2246, 28USC2247, 28USC2248,

28USC2253, and 28USC 2255.

STATEMENT OF THE CASE

12/2/02, Biskupic filed an Information against Christ alleging that 6/14/02 Christ said "in an interview with a special agent of the FBI with respect to property flipping and other fraudulent real estate practices" that "he was unaware of any individuals engaging in property fraud," and "he had never, as a seller of real estate, provided funds to the buyer to improperly inflate the equity in the transaction" in violation 18USC1503. In purported support, the Information also alleged: "The property flipping investigation was part of ongoing official proceedings in the Eastern district of Wisconsin, including grand jury and other criminal proceedings."

A plea agreement signed by Christ and his Attorney Gimbel 10/30/02 was filed but not signed by Biskupic 11/28/02.

08/26/2004, Christ filed his first and only 2255 to vacate, set aside and correct the 08/28/2003 judgment of Randa, in *Torzala v. US*, 02-CR-252, pursuant to a plea of guilty to obstructing justice, allegedly violating 18USC1503. Christ was sentenced to 18 months incarceration and two years supervised release, which Christ completed.

Christ's Petition alleged four grounds for relief. Ground One: conviction obtained by unlawfully induced guilty plea; **Ground Two**: conviction obtained by unconstitutional failure of prosecution to disclose evidence favorable to Christ; **Ground Three**: Gimbel constitutionally ineffective, resulting in **an innocent** pleading guilty to what was *not* a federal crime; and **Ground Four**: sentence enhancements violated Christ's constitutional right to

have all matters to which he did not plead or agree to decided by a jury.

Christ's Petition alleged the following supporting facts. Ground One: Christ was induced to plead guilty by Gimbel, Biskupic and Randa because each convinced him that he was guilty of a federal crime--obstructing justice violating 18USC1503--when neither in law nor fact was he, as**(1)**there was no judicial proceeding at the time of his alleged obstruction of lying to the FBI,**(2)**necessarily Christ could not know of it when he allegedly lied to the FBI,**(3)**his statement to the FBI was neither obstructing nor even false, but rather mere momentary expression of opinion, legal, and correct, that he had committed no crime. Christ's 2255 also alleged that even if he lied, that should have been prosecuted as violating 18USC1001 which had a statutory maximum half that of 18USC1503 and the guideline; **Ground Two**: Biskupic had a duty to do and see justice done, *US v. VanEngle*, 15F.3d623,629(7th Cir. 1993), which Biskupic violated by obtaining Christ's waiver of indictment and guilty plea while hiding that Christ's conduct was not a federal crime and that charging him with violating 18USC1503 was unconstitutional, in that the necessary elements of "obstruction,""knowledge of judicial proceeding," "judicial proceeding," and "intent to impede judicial proceeding"were absent; also failing to tell Christ that his witnesses had been given deals to testify against **innocent persons such as Christ**; Biskupic violated said duty to do and see justice done by not disclosing he knew the FBI lied in saying Christ had lied, and Christ had not lied, so that not even 18USC1001 was viable basis for prosecution; and by failing to disclose that his motive in asserting an 18 USC1503 violation was to up-the-ante and avoid the

challenge that there was no falsehood to support a 18USC1001 violation; **Ground Three**: Gimbel failed to advise Christ that his conduct was not a crime and that charging him with violating 18USC1503 was unconstitutional, in that the necessary elements were absent; Gimbel told Christ the plea to obstruction was a made-up-charge so that Biskupic could claim victory and so avoid failing to find other basis for federal charge in real estate flipping activities and Christ could get on with his life immediately, free of official suspicion with his promised probation; contrary to that promise of expedition, sentencing dragged on, during which Gimbel assured Christ he could lead a normal life, including one last hunting trip, to New Zealand, before gun and travel restrictions applied; Gimbel made egregious statements contrary to fact and detrimental to Christ at sentencing which exacerbated Christ's sentence; **Ground Four**: Randa used impermissible criteria in sentencing, neither agreed nor established beyond a reasonable doubt by a jury, including**(1)**Randa's surmise that Christ had been less than forthright with the FBI(double counting in view of the charge, 18USC1503, or even 18USC1001), **(2)**Christ's being an avid life-long hunter,**(3)**Christ attempting to go on one last hunting trip,**(4)**general impressions of the probation officer that Christ lacked candor,**(5)**Christ's allocution,**(6)**general principles of deterrence, rehabilitation, retribution, and**(7)**bogus assertions by Wisconsinites that Christ's real estate transactions constituted improper(?)flipping, resulting in a sentence to 18 months incarceration and supervised release rather than probation which was Christ's consideration for agreeing to plead guilty.

12/15/2004, Biskupic responded that Christ's 2255 should be held in abeyance pending *Booker v. U.S.*, 535US220(2005) because **Ground Four** deserved no retroactivity, ignoring that retroactivity had no relevance because the complained of conduct had preceded *Apprendi v. New Jersey*, 530US 466(2000), which established the basis upon which **Ground Four** was premised, *Blakely v. Washington*, 534US296(2004), and *Booker* being reaffirmations of *Apprendi*, and *Jones v. US*, 526US227 (1999).

Christ replied: "Instead of proving that there was a judicial proceeding at 6/14/02, 'the time of [Christ]'s contact with the FBI,' [Biskupic] states that '[US] had ongoing property flipping[1] investigations, including cases against individuals associated with Bayshore Mortgage,[Stanelle, McGowan, Hudson, Polinske [or Kindred] and Wichman].' If [US] means by this assertion that the FBI was investigating, it is irrelevant because an FBI investigation is not a judicial proceeding. *US v. Aguilar*, 515US593(1995), *US v. Fassnacht*, 332F.3d440(7th Cir. 2003). If US

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[1]'Property flipping' was nowhere defined, nor how it differed from what every dealer in personal or real property does, or indeed any seller, which is to buy low and sell high to make a profit explained. None of what had been described as such by the Milwaukee Journal Sentinel, i.e., 'a real estate fraud in which a group of people sell houses to each other at rapidly increasing prices,' appears to have occurred. Obviously, houses do not lend themselves to the securities flipping schemes attributed to Fisk, Gould and other of the robber barons and their successors whose conduct resulted ultimately in state and federal securities laws. That is because house transfers cannot be churned and their value is on the street for everyone to see. Houses are local, not within the legitimate penumbra of federal jurisdiction. Accordingly, the term was applied pejoratively for nothing more than universally accepted, local and legal, commercial activity which is none of the federal government's business.

means by this assertion that there was a judicial proceeding pending, the assertion is patently untrue, based on the Court Docket and the US press releases. The burden is on US to show that a judicial proceeding was pending when [Christ] made his statement to the FBI. It is not sufficient merely to rely on the allegations of the Information, as US has done in response.

"Especially is this true when [US]'s own recitation of 'Facts'...does not support...the Information. Particularly is this true when such 'Facts' are specifically contradicted by the Court Dockets and the Press Records which are necessarily based upon the utterances of [Biskupic]. It is not sufficient merely to rely on the...Information. As the Docket Sheet[2] for McGowan/Hudson makes clear, that case was terminated before 6/14/02; the Docket Sheet for Wichman, his case was not commenced until well after 6/14/02;[3] Stanelle pleaded guilty 3/23/00 amd sentenced 2/12/01. Obviously, her case was not ongoing at 6/14/02, contrary to...[Biskupic]'s...assertion. [Kindred] pleaded guilty 4/21/00 and was sentenced 7/7/00. Clearly, his case was not ongoing at 6/14/02, contrary to...[Biskupic]'s assertion.

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[2]As the docket sheets are District Court records, Christ had not included them as exhibits and, instead, asked that they be judicially noticed pursuant to Federal Rules of Evidence 201, 803(8), 902, and 1005. Tellingly, save the first, each case proceeded pursuant to **Information** rather than **Indictment**!

[3] Furthermore, his charges, as well as those of the others indicted as a result of "property flipping," were for alleged violations of monetary reporting requirements, something that would have been virtually impossible with respect to Christ; hence, the insidious FBI "false statement" set-up. Dates in this paragraph, other than this one, have been adjusted from newspaper dates to court docket dates, solely for accuracy, even though substantively indifference.

"As for the newspaper report upon which [US] relies, the Press Record shows that all 'judicial proceedings' had been concluded before 6/14/02 and that Wichman's did not commence until 9/10/02.[4] Of course, [Christ]...has no access to secret grand jury records, but insists that any contradicting the public record be presented by...[Biskupic]...as necessary to satisfy his burden of coming forward and proof in this proceeding.

"Defendant's 'admission' of facts peculiarly within the sole province of...[US], and which had been induced by [Gimbel], [Biskupic] and [Randa], cannot be permitted to abrogate the requirement for truth and proof. Nor can the corollary bootstrap that [US]...to belittle [Christ]'s claim of incompetent counsel be legitimately countenanced. Further to the efficacy of any 'admission,' a grand jury proceeding is secret. Federal Rule of Criminal Procedure 6(e)(2). So how is one to know of such 'judicial proceeding' so as to satisfy that element of the offense of obstruction of justice? *Pettibone v. US*, 148US197(1993), *US v. Van Engle*, 15F.3d623(7th Cir. 1993). Further to the efficacy of any 'admission,' specific intent to impede a known 'judicial proceeding' is required. *US v. Guzzino*, 810F.2d687(7th Cir. 1987), an impossibility if there were no 'judicial proceeding' and, since the basis for the FBI being able to assert 'falsity' apparently occurred as a result of further statements by [Christ] within the same conference, any impedance was so fleeting and so *de minimus* as not to constitute obstruction at all.

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[4]Again, these are readily accessible from the Milwaukee Journal Sentinel website, www.jsonline.com and counsel has not attached the result as exhibits, asking instead that the Court take cognizance of them per FRE 201 and 902(6).

"As a matter of basic contract law, if one party is no longer bound by his promises in the contract, neither is the other party bound by the contract. *Corbin on Contracts*, §§ 11, 112 (1963), *Beaver v. Mueller*, 263 Wis2d431, 662NW2d678(2003), *Bank One Milwaukee v. Williams Bay Trading Co. Ltd.*, 239Wis2d593, 620 NW2d482(2000), *First Wisconsin Nat'l Bank v. Obj*, 52Wis2d1, 188NW2d454(1971), *Wisconsin Dairy Fresh, Inc. v. Steel Tube Products Co.*, 20Wis2d415, 122NW2d361(1963), *Woodman v. Blue Grass Land Co.*, 125Wis489, 103NW236(1905). Accordingly, Christ's guilty plea provides no basis for waiver or estoppel....[US]'s reliance on it for any purpose is baseless.

"As such contract was induced by [Gimbel], [Biskupic] and [Randa] by fraud, it is a nullity. *Douglas-Hanson Co. v. B.F. Goodrich Co.*, 229Wis2d 132, 598NW2d262, aff'd 233Wis2d276, 607NW2d 621 (2000), *First Financial Services, Inc. v. Brandt*, 266 Wis2d693, 667NW2d377(2003). The fraud was that Christ's conduct constituted a federal crime, a matter peculiarly without...[Christ's]...bailiwick for which he had to rely on the threesome, the one his bounden representative, the other whose duty was to see justice done and the third, responsible for the ultimate fairness of the proceedings and the protection of the accused and thc rights with which an accused is constitutionally clothed to stand against otherwise unbridled usurpers of State Power.

"In addition to participating in the hood-wink, Christ's trial attorney invited enhancement of Christ's sentence by positing matter beyond Christ's plea and admissions as bases for sentencing. So this is not a case where Christ's attorney failed merely to attack sentence enhancement which might be excused as an exercise of professional judgment. This is a casc where counsel precipitated sentence enhancement

and was the key contributor to it. With such counsel representing one, who needs a prosecutor?

"Indeed, the judge did enhance the sentence on the basis of these extra-legal considerations. Therein lies the violation of Christ's 6th Amendment right to have his sentence based upon facts as determined beyond a reasonable doubt by a jury, *Jones v. U.S.*, 526US227(1999), *Apprendi v. New Jersey*, 530US460 (2000), *Blakely v. Washington*, 542US296(2004) and *U.S. v. Booker*, 543US220(2005), '...the right analogs in pleaded cases:...the statement of factual basis for the charge shown by a transcript of plea colloquy or by written plea agreement presented to the court, or by a record of comparable findings of fact adopted by the defendant upon entering the plea' *Shepard v. U.S.*, 544US13(2005).

"In a letter to...Randa, [US]...asserted 'In a decision issued 2/2/05, the 7th Circuit Court of Appeals held that a *Booker/Blakely* challenge to a prior sentencing cannot be raised under a section 2255 petition because those decisions are not retroactive. *See Reynolds*[sic]*v. US*, No.04-2520(7th Cir. 2/2/05).'

"Christ believes that retroactivity is not an issue here for numerous reasons. First, the right of Christ that is at issue is his 6th Amendment right to trial by indictment and jury. Now, Christ did waive indictment and trial by jury, but his doing so was based upon fraudulent inducement by the aforesaid triumvirate. Also, the other party,...[US], did abrogate the plea bargain. So any putative waiver is ineffectual and a nullity. Even apart from that, however, Christ was entitled to be sentenced on the basis of the *Shepard* analogs, which did not include the bases upon which he was sentenced.

"The 6th Amendment, of course, has been with US since 1791. Likewise, the 7th Amendment which also

guarantees trial by jury, but in civil matters. The language relating to juries in each is identical. Yet criminal trials have been bifurcated so that criminal juries have been limited to deciding guilt and innocence beyond a reasonable doubt and the judge the consequences thereof by a preponderance, whereas civil trials have not been so split. The civil jury decides liability and damage. Just recently, beginning with *Jones*, supra, the federal courts have begun to realize that this bifurcation, having its completest iteration in *McMillan v. Pennsylvania*, 477 US79(1986), is unconstitutional. So the assertion that retroactivity is an issue at all is quite disingenuous. Even so, Christ's final judgment was 8/28/03, well after *Apprendi*, which pronounced in recent times the ancient right and which provided the basis for relief in all pending federal cases to which it was relevant, lest we forget, as the USA would have us do by diversion to the later *Blakely* and *Booker*. Hence, even under modern judicial prestidigitation, Christ is entitled to that ancient right without having to rely on the black magic of retroactivity. At least the 7th Circuit has so held. *U.S.v.Mansoori*, 304F.3d636(7th Cir. 2002).

"Furthermore, what can be more basic to constitutional criminal practice than the right to jury determination of sentence and, where pursuant to a plea of guilty, confinement to the facts actually admitted therefor? If that most basic right is denied, the sentence must be a nullity.

'To conclude: attempting to sell one's properties, even at a profit, is not...any crime; nor can substituting obstruction of justice from a layman's legal opinion, facially not even false, and cleverly wangled by the FBI, confer federal jurisdiction, not beyond that sufficient to declare subject matter jurisdiction lack-

ing, especially when the key element, a pending judicial proceeding, is absent too."

Compelled by threat of mandamus issuing against him, Randa denied Christ's 2255 6/6/06, relying on Christ's plea agreement--even while asserting that it had been breached and was therefore void--and guilty plea, eschewing its abnegation despite his assertion that the plea agreement was void, and treated both agreement and plea as precluding presentation of contrary facts by Christ. Randa asserted that facts elicited at the plea hearing also provided unassailable bases for his decision, specifically the statement that there was an on-going FBI investigation, that someone had been indicted three months after Christ's "encounter with the FBI" without ever stating that **ONE RELEVANT FACT** within his and the prosecutor's special knowledge that there was **NO GRAND JURY** sitting as to any relevant matter at the time that Christ made his statement to the FBI, including that it was not in agency with any Grand Jury. He expressed comfort from his understanding that Biskupic was prepared to introduce evidence that Christ **knew** of an ongoing '**Investigation by the FBI** into the activities at [a mortgage broker],' thereby misinterpreting what constitutes a judicial proceeding for the purpose of 18USC1503.

He dismissed Christ's plea that he had not committed any federal crime by countering this was waived by pleading guilty even though Christ, like every unfortunate lay person, must rely on the lawyers--defense, prosecutor, and judge--to tell him whether he violated so complex laws. This, despite Christ's allegations that Gimbel was constitutionally inadequate, Biskupic hid law and facts from him and Randa sat on his thumb whilst the charade played out.

Without hearing Randa decided Gimbel was adequate because the facts offered at the plea hearing were sufficient to establish guilt and Christ had admitted that the judge could impose whatever sentence he wanted, not being bound by the plea agreement. He failed to address any of the reasons Christ gave in support of constitutional inadequacy.

Randa dismissed Christ's argument that Christ's sentence was premised on criteria to which he had not acceded in his plea agreement by asserting that the legal bases for Christ's argument, *Blakely* and *Booker*, had not been decided by then and that the 7th Circuit Court of Appeals had decided in *McReynolds v. US*, 397F.3d479(7th Cir. 2005), that they were not retroactive, totally ignoring that the 6th Amendment had been around for two centuries, except for its period of improper suppression by *McMillan v. Pennsylvania*, 477US79(1986), and totally ignoring that *Jones* and *Apprendi* had been decided well before Christ's conduct or case.

Christ appealed Randa's decision. Randa issued a certificate of appealability, allowing appeal of Christ's 2255, citing *Miller-El v. Cockrell*, 537US322,336 (2003), because reasonable jurors could reach a different conclusion from his, but disallowing Christ's **Ground Four** because sentencing had preceded *Blakely* and *Booker* which were not retrospective, citing *McReynolds v. US* @ 480-1.

Christ commenced his supervised release 10/14/04, and was released 10/14/06. The restraints of 18USC922(g), and undeserved criminal history, will continue until his present erroneous convict status is removed.

Timely appeal to the 7th Circuit was made asserting all the foregoing reversible error as well as Randa's failure to hold an evidentiary hearing to resolve fac-

tual disputes, which was reversible error occurring in the 2255 proceeding and had to await appeal before objection being made.

REASONS FOR GRANTING THE WRIT

As stated in Christ's Petition for *en banc* review to the 7th Circuit, which was summarily denied following Williams' opinion, in which panel Judges Ripple and Manion concurred, this case involves questions of exceptional importance:(a)the scope and consequence of "actual innocence;"(b)whether an improvident plea precludes a 2255 hearing;(c)whether expressing different opinions from an FBI agent of whom one made inquiry about rumors can sustain a conviction for obstructing a non-existent grand jury;(d)whether Gimbel provided constitutionally adequate representation by(i)advising Christ to plead guilty to a non-existent crime,(ii)materially misrepresenting plea agreement consequences, and the conduct in which Christ may engage pending sentencing, causing its increase, and(iii)assuming the prosecutorial role so as to materially increase Christ's sentence;(e)whether Randa could consider aggravating factors not agreed without violating the *Shepard*'s adjunct to the 6th Amendment right to trial by jury;(f)whether the 7th Circuit denies right of appeal by patently ignoring material facts and patently misapplying the law as Williams and her panel did, and the entire Court condoned, thereby writing Great Writ out of existence.

Christ asserted "actual innocence," which Williams ignored and mistreated his case as one in which the complaint is that the record contains insufficient proof of guilt of the crime to which he pled guilty. In so doing, Williams circumvented

the mandate of *Davis v. US*, 417US333, 346-47(1974) that "actual innocence" supports collateral relief under §2255. 545F.3d@522. To support her misconstruction, Williams quotes from Christ's 2255 Petition [App. 5-6] but had to lop off Christ's expression of "actual innocence." The entire quote is

> "I was induced to plead guilty by my defense attorney, the prosecutor and the presiding judge because each of them convinced me that I was guilty of committing a federal crime **when, in law and fact, I was not**." [Christ 2255 Motion Form, Item 12.A. Supporting Facts, p. 5.][App. 44]

There are 22 additional instances of Christ maintaining his "actual innocence," belying Williams' contrary, patent absurdity that Christ "does not maintain that he is actually innocent of obstructing justice." [See Appendix, pp. 6, 44-50.]

The statements made by Christ were an 'exculpatory no,' the equivalent of exercising one's 5th Amendment rights under until Justice Scalia abrogated it in *Brogan v. U.S.*, 522US398(1998), which decision is wrong and should be revisited and reversed by the Supreme Court.

Judge Williams should not have held that that Christ's acquiescence to prosecutorial assertions of facts that did not exist–a pending grand jury and obstructive lies--constituted irretrievable guiltiness, conviction and sentence despite his obvious actual innocence! Instead, she should have acknowledged(1)the result of her examination of the "supplemental record" with "2env. in camera" she got "4/26/07," that there was no grand jury![7th Circuit Docket];(2)that a few minute colloquy between Christ and FBI Agent Sparacino was impossible of constituting an obstruction of any

grand jury. Biskupic's naming of the individuals involved in his "property flipping scheme" demonstrates that there was no grand jury extant at the time investigating. All the cases had been resolved two years before. Wichman's indictment three months later would have been a result of the information that Christ voluntarily provided the FBI about Bay Shore Mortgage, Wichman's mortgage company.

Even assuming a grand jury investigation extant which Christ could have obstructed, even assuming a lie to the FBI, even assuming the agent was acting in furtherance of that grand jury investigation, "his lie" was abnegated within minutes of its making, hardly enough time for an agent to finish his coffee and donut.

The proper question is not whether Christ gave up an ability to hold US to proof of his guilt, but whether US will be permitted to fabricate a case against an innocent and get away with it! US must not be rewarded for making false charges in reliance on an innocent's ignorance of law and his attorney's failure to advise and defend him! That is exactly what Williams' confirming Randa's decision did!

Williams' focus was irrelevant in the face of "actual innocence" and meting justice. A defendant who is actually innocent gives up nothing by an improvident plea, especially for conduct that is not even a crime. *US v. Broce*, 488US563(1989) does not provide her aid, nor *North Carolina v. Alford*, 400US25(1970), nor *Young v. US*, 124F.3d794 (7th Cir. 1997). There must be an actual crime, the defendant must have an understanding of the law in relation to the facts. *McCarthy v. US*, 394U.S. 459,466(1969). How can that be where, Christ merely responded to FBI Agent Sparacino that

> "he was unaware of any individuals engaging in **property fraud**,"[whatever that is] and that "he had never, as a seller of real estate, provided funds to the buyer **to improperly inflate the equity** [whatever that means] in the transaction[,]"

obviously disputable opinions in response to fuzzy, leading and argumentative questions, which Christ conceded were disputable within minutes of their colloquy, therefor precluding any possible obstructive impact on a grand jury proceeding even if there had been one pending?

Broce posits additional exceptions:

> "There are exceptions where on the face of the record the court had no power to enter the conviction or impose the sentence. *Blackledge v. Perry*, 417US21(1974); *Menna v. New York*, 423US61(1975)...[In *Blackledge*, w]e held that the potential for prosecutorial vindictiveness against those who seek to exercise their right...raised sufficiently serious due process concerns to require a rule forbidding...bring[ing] more serious charges against defendants in that position. The plea of guilty did not foreclose a subsequent challenge because...the defendant's right was 'the right not to be haled into court at all... The very initiation of proceedings against him . . . thus operated to deny him due process of law.' 417US@ 30-31...[So too *Menna v. New York*, w]here the State is precluded by the United States Constitution from haling a defendant into court on a charge, federal law requires that a conviction on that charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty.' 423US@62. We added, however, an im-

portant qualification:...'We simply hold that a plea of guilty to a charge does not waive a claim that the charge is one which the State may not constitutionally prosecute.'"

Such was Christ's claim. How could he obstruct justice by a momentary expression of opinion in disagreement with an FBI agent who is not even investigating pursuant a grand jury mandate at the time, as clearly demonstrated by the fact that Christ came to him?

"Actual Innocence" Obliterates the Relevance of Rule 11. Therefore, Williams reliance on it was reversible error. Also, the sentencing proceeding was fatally corrupted by Gimbel's constitutionally inadequate advice as to the offense, his "wink-wink" that the result of a plea would be probation; abrogation of the plea agreement by imposing something other than probation; and the resulting negation of any binding effect on Christ of his plea agreement, permitting him to assert his "actual innocence" because he did not lie to the FBI because what he said to the agent could not possibly obstruct a grand jury, and because there was no grand jury. Christ should not have to make such argument. Williams should not have rendered an opinion which is so totally contrary to considered law, the facts, common sense and justice!

Denial of an Evidentiary Hearing on the grounds asserted by Williams has far reaching adverse consequences which nullifies availability of habeas corpus pursuant to 28USC2255. Christ presented material issues of fact which went to the heart of the false Information, guilty plea, guilty plea agreement and sentence. Williams wrongly stated "the district court did not abuse its discre-

tion when it decided Torzala's [2255] without holding a hearing" because, her reason—

> "Torzala did not submit any affidavits in support of his motion[is false, the 2255 being its own affidavit], and[although true that]the district court 'has discretion to deny an evidentiary hearing where the motion, files, and records of the case conclusively show that the prisoner is entitled to no relief,' *Cooper v. United States,* 378F.3d638, 641-42(7th Cir. 2004). That is[NOT]the case here." 545F.3d @525.

One material fact was the absence of any judicial proceeding to obstruct; another the absence of Christ's knowledge of a judicial proceeding to be obstructed; another the absence of Christ's intent to obstruct any judicial proceeding; another the absence of any obstruction of a judicial proceeding; another the impossibility that the fleeting conduct alleged as obstructing justice could actually obstruct any judicial proceeding, even if such a proceeding were extant; others related to unlawful inducements to plead guilty; prosecutorial failures to see justice done; to defense counsel's failure to adequately represent Christ as to advise him that his conduct was not criminal, and as to his guilty plea, the plea agreement, constraints during the sentencing process, the sentencing hearing and appeal. Almost no fact was undisputed.

While Christ was denied evidentiary hearing, Biskupic was permitted to usurp it with nothing more than unethically positing his own unsubstantiated unsworn newspaper quote, violating Christ's 6th Amendment confrontation right, implausible at that—his posited period spanning the lifetimes of numerous grand juries, not one of which could law-

fully extend through that entire period, not the best evidence whether there was a grand jury proceeding on 6/14/02 for Christ to impede, but rather hearsay from an advocate bent on upholding Christ's conviction and sentence. Quite contrary to conclusively showing that Christ had no right to relief, his 2255 and reply demonstrated that he had numerous grounds for relief. Without an evidentiary hearing, the Court's conclusion otherwise was abusive. Were hearing not required unless the petitioner submits a sworn detailed affidavit setting forth a material factual dispute, Christ's 2255 did exactly that and satisfied the requirement.

Christ's 2255 set forth detailed facts and did swear to them under oath as required by the form required to be filed with the district court. In so doing, Christ met the requisite criteria for serious consideration of his 2255. *Galbraith v. U.S.*, 313 F.3d1001(7th Cir. 2002). Insofar as *Galbraith* stands for the proposition that an affidavit is required in addition to the facts and oath of the 2255, it must be overruled because such conclusion is contradicted by Rule 11 of the Federal Rules of Civil Procedure, which states:

> "(a)...Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit."

Galbraith's conclusion is specifically contradicted also by the Explanation and Instructions of the 2255 form that a petitioner must use, Instruction(6)thereof admonishing inclusion of "all grounds for relief and all facts supporting such grounds for relief in the motion," Instruction(2)thereof stating:

> "[a]dditional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief," and Instruction(1)thereof warning "[t]his motion must be...

> signed by the movant under penalty of perjury," and "[a]ll questions must be answered concisely in the proper space on the form,"

thus egregiously misleading the petitioner if a separate affidavit from the motion to which the petitioner swears under penalty of perjury is also required in order for the petition to get beyond itself, in effect perpetrating a judicial fraud on the petitioner.

The facts of Christ's 2255 were not disputed, of course, until Biskupic filed his Response, which was neither under oath nor accompanied by any affidavit or evidence, but merely made reference only to those corrupted items, the Information, the plea agreement and sentencing transcript which Christ was challenging on the basis of bamboozlement and inadequate representation and which were authored by Biskupic.

As Christ committed no federal offense, *a fortiori*, the inducement by Gimbel, Biskupic and Randa to plead guilty was improper.

Under the Rules Governing Section 2255 Proceedings for the United States District Courts the judge is to "determine whether an evidentiary hearing is *required*." Rule 8(a). The ¶ 2255 Rules Advisory Committee Notes state:

> "The standards for §2255 hearings are essentially the same as for evidentiary hearings under a habeas petition, except that the previous federal fact-finding proceeding is in issue rather than the state's...With these minor differences in mind, see the advisory committee note to Rule 8 of ¶2254 rules, which is applicable to Rule 8 of these §2255 Rules."

The §2254 Rules Advisory Committee Notes state:

> "The appropriate standard***is this: Where the facts are in dispute, the federal court in habeas

> corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of trial or in a collateral proceeding. [*Townsend v. Sam*, 372US293, 312(1963)]"

Christ met this criterion because all material facts were in dispute and he could not have received a full and fair evidentiary hearing upon a plea of guilty, that was fraudulently induced and condoned, to an offense that did not occur. Therefore, evidentiary hearing was not discretionary. It was mandatory.

Randa abused his discretion in deciding as he did, whether with or without a hearing. Abuse cannot be erased by Christ not having provided affidavits. The 2255 Motion Form itself provides:

> "I declare under penalty of perjury that the foregoing is true and correct."

Christ signed as required. That is an affidavit. Furthermore, there is no requirement and no necessity for other affidavits. The 2255 Petitioner is required to use the form created by the Court. This form asks a series of questions which:

> "must be answered concisely in the proper space on the form."[Instruction 1, page 1.]"Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished."[Instruction 2, page 1.] "Motions which do not conform to these instructions will be returned with a notation as to the deficiency."[Instruction 8, page 1.]"State concisely every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground." "Caution: If you fail to set forth all ground in

> **this motion,** you may be barred from presenting additional grounds at a later date. [Instruction to Item 12, page 4.]"

Emphasis by underlining is in the 2255 Form; bold emphasis is Christ's. The clear message through the Courts' 2255 Motion Form is that the lay person may complete and file it in accordance with its terms, confident that objections such as Williams' will not scuttle it. The Clerk not returning it for additional "affidavits" further confirms that Christ's form is sufficient for all purposes, including evidentiary hearing and substantive review.

The 2255 Motion Form is not intended to be and is not an initial appellate brief, nor a record of the case below, as to which doctrines of "waiver" or "forfeiture" might apply. Instead, it is the complaint that launches the claim. *Hoskins v. Poelstra*, 320 F.3d761(7th Cir. 2003).

That contracts are to be construed against their author is a well-known legal maxim which applies here. *Zenith Insurance Co. v. Employers Insurance of Wausau*, 141F.3d300 (7thCir.1998), *Waugh v. Q. & C. Co.*, 16F.2d 363,365 (7th Cir. 1926).

Christ cannot be prejudiced by his compliance with the Court's own Motion 2255 Form and its proscription to comply with the form.

Requiring separate affidavits to be attached to the 2255 Form is contrary also to the direction of 28USC2246 which contemplates that evidence may be presented by affidavit only if the Court permits it and therefore presupposes that the manner of proceeding will be determined by the judge after response to the motion by the custodian. The manner posited by Williams would be tantamount to granting summary judgment against the petitioner solely on

his pleading because the petitioner complied with the 2255 Form and its Instructions!

Williams was blind to all these issues. Her opinion conflicts with the United States Supreme Court—*Davis v. US*, 417US333(1974), *North Carolina v. Alford*, 400US25(1970), *US v. Broce*, 488US563(1989), *Bradshaw v. Stumpf*, 545 US175(2005), *Brady v. US*, 397US742(1970), *Bousley v. US*, 523US614(1998), *US v. Aguilar*, 515US 593(1995), *Massaro v. US*, 538US500(2003).

The criteria Williams stated to be lacking in Christ's 2255--sentence imposed in violation of the Constitution or laws of the US, lack of jurisdiction, sentence greater than the legal maximum--Christ met because a federal court lacks jurisdiction to find guilt or impose any sentence, and any sentence is greater than the legal maximum when the underlying conduct is not a federal crime. Christ's conviction and sentence are subject to collateral attack for all these reasons stated in his 2255 and Briefs, as well as additional reasons so stated, among them that Gimbel was constitutionally inadequate, Biskupic would have worked a fraud on Randa but for the judge's knowing complicity in perpetuating the fraud and therefore both perpetrated fraud on the court as an institution.

Williams again missed the point in her assertion that "a guilty plea admits not simply that he committed the acts charged in the indictment, it is an 'admission that he committed **the crime** charged against him" because there must be a federal crime one is admitting and Christ committed NO CRIME!

Christ's 2255 claim is that his plea was not knowingly and voluntarily entered into. It is supported by all the facts. Therefore Williams' case recitations are irrelevant. "Waiver" has no application to Christ

either. His plea is blasted away by absence of necessary criteria of *Bradshaw v. Stumpf*, 545 US175(2005) and *Brady v. US*, 397US742(1970): voluntary, knowing, intelligent or with sufficient awareness of the relevant circumstances and likely consequences. Applying *Bousley v. US*, 523US614 (1998) as a template:

> "A plea is not intelligent unless a defendant first receives real notice of the nature of the charge against him, *Smith v. O'Grady*, 312US329, 334 (1941), [from which receipt Christ was precluded by the absence of an indictment and proper counseling by his attorney.]"...[Bousley]contested his sentence on appeal, but did not challenge the validity of his plea. In failing to do so, [Bousley]procedurally defaulted the claim he now presses on us,"[whereas Christ's challenge was the illegality and ineffectuality of his plea to a non-crime, and the illegality of his sentence for a non-crime.] "To establish actual innocence, petitioner must demonstrate that, 'in light of all the evidence,' it is more likely than not that no reasonable juror would have convicted him." *Schlup v. Delo*, 513US298, 327-328(1995).

Clearly, a properly instructed, unbiased jury could not have convicted Christ of obstructing a non-existent grand jury based on a few minutes' opinion exchanged in colloquy with an FBI agent not engaged in a grand jury investigation whom Christ contacted. Christ did not appeal his conviction because he did not arrive at prison, where other sufferers from inadequate representation would make him aware, until after his stultifying anger at his attorney's shameless betrayal at sentencing abated, and the time for appeal passed.

The record demonstrates that "neither[Christ], nor [Gimbel], nor [Randa]correctly understood the essential elements of the crime with which[Christ]was charged," and therefore his guilty plea was constitutionally invalid, *Bousley*, 523 US @ 619, and cannot serve as the waiver that Williams employed to avoid doing justice in Christ's case. She baldly stated Christ's plea was "knowing and voluntary," providing no explanation. Biskupic had not at any point shown that

> "[the required grand jury]proceeding was pending," let alone Christ "knew of such a proceeding" or that in his Warholian 15 minutes of [in]fam[y],"[Christ]corruptly intended to impede the administration of that[non-existent] proceeding," which Williams acknowledges to be the "essential elements" of obstruction of justice under 18USC1503, citing *US v. Macari*, 453F.3d926(7th Cir. 2006) and *US v. Fassnacht*, 332F.3d440(7th Cir. 2003).

Instead of explanation, Williams posited waiver based on Christ's obviously improvident plea, ignoring that even a provident plea cannot survive the absence of a crime. She relies on Christ's admission in the plea agreement, prepared by Biskupic: "there was a 'pending judicial proceeding' within the scope of §1503[when Christ]gave his false statements to the FBI" instead of the absence of a grand jury that Christ expected the panel would confirm after additional documents were requested of the District. Instead, the panel took 17 months from that date[4/26/07]to mull over how to circumvent that absence of the essential elements of 18USC1503 in its opinion[9/19/08]. Williams' citation of *US v. Aguilar*, 515US593(1995) and *US v. Maloney*, 71 F.3d645(7th Cir. 1995) for her assertion

that the essential element of 18USC1503 could be supplied merely by a query to the FBI is astounding because neither case supports her. Chief Justice Rehnquist opined oppositely in *Aguilar*:

> "...it is not enough that there be an intent to influence some ancillary proceeding, such as an investigation independent of the Court's or grand jury's authority. Some courts have phrased this showing as a 'nexus' requirement--that the act must have a relationship in time, causation or logic with the judicial proceedings. *US v. Wood*, 6F.3d692, 696(10th Cir. 1993); *US v. Walasek*, 527F.2d676, 679, and n. 12(3rd Cir. 1975). In other words, the endeavor must have the 'natural and probable effect' of interfering with the due administration of justice. *Wood*, supra, @695; *US v. Thomas*, 916F.2d647, 651 (11th Cir. 1990); *Walasek*, supra, at 679. we find it unnecessary to address them because we think the 'nexus' requirement developed in the decisions of the courts of appeals is a correct construction of Section 1503...We do not believe that uttering false statements to an investigating agent--and that seems to be all that was proven here--who might or might not testify before a grand jury is sufficient to make out a violation of the catchall provision of Setion1503...The Government did not show here that the agents acted as an arm of the grand jury, or indeed that the grand jury had even summoned the testimony of these particular agents. The Government argues that respondent 'understood that his false statements would be provided to the grand jury' and that he made the statements with the intent to thwart the grand jury investigation and not just

the FBI investigation. The Government supports its argument with a citation to the transcript of the recorded conversation between Aguilar and the FBI agent at the point where Aguilar asks whether he is a target of a grand jury investigation. The agent responded to the question by stating: '[T]here is a Grand Jury meeting. Convening I guess that's the correct word. Um some evidence will be heard . . . I'm sure on this issue.' Because respondent knew of the pending proceeding, the Government therefore contends that Aguilar's statements are analogous to those made directly to the grand jury itself, in the form of false testimony or false documents. We think the transcript citation relied upon by the Government would not enable a rational trier of fact to conclude that respondent knew that his false statement would be provided to the grand jury, and that the evidence goes no further than showing that respondent testified falsely to an investigating agent. Such conduct, we believe, falls on the other side of the statutory line from that of one who delivers false documents or testimony to the grand jury itself. Conduct of the latter sort all but assures that the grand jury will consider the material in its deliberations. But what use will be made of false testimony given to an investigating agent who has not been subpoenaed or otherwise directed to appear before the grand jury is far more speculative. We think it cannot be said to have the 'natural and probable effect' of interfering with the due administration of justice."

"Under *Aguilar*, therefore, there is a significant difference between an accused who pro-

vides a false statement to an investigator with the knowledge that the evidence will be provided to the grand jury (or an accused who provides false evidence directly to the grand jury), and an accused who simply makes false statements to an investigative agent. If an accused makes a false statement to an investigating agent without the knowledge that the agent will forward that information to the grand jury, it is 'far more speculative' whether the false statement will have the 'natural and probable effect' of obstructing justice. Such speculation is insufficient to support a conviction under § 1503." *US v. Fassnacht*, 332 F.3d 440 (7th Cir. 2003), *US v. Furkin*, 119 F.3d 1276 (7th Cir. 1997).

US v. Maloney, 71 F.3d 645, 656 (7th Cir. 1995), upon which Williams relies is so different from *Torzala* as to be a confirmation on that basis alone that Williams' opinion is wrong and must be reversed:

"There was substantial, unrebutted, evidence introduced to establish the existence of a pending judicial proceeding and Maloney's knowledge of it. Robinson stated that on May 5, 1988, before Maloney's first 'standing tall' conversation with Swano, he testified before the grand jury and was asked questions about his passing of bribes to many specific judges, including Judge Maloney. In 1989, Robinson was summoned to again appear before the grand jury to testify on the same subject. On February 21, 1989, IRS investigator Dennis Czurylo specifically informed Maloney that he was the subject of a grand jury investigation and served him with subpoenas issued under the authority of this grand jury. Czurylo also testified that he

served a total of approximately 300 grand jury subpoenas in his investigation of Judge Maloney. Agent Rick Kozma testified that he was brought into the grand jury investigation of Maloney in September of 1989 to aid Czurylo in evaluating the information they received from these subpoenas. The owner of the Park West Currency Exchange and a representative of an investment advisory firm both testified to having received subpoenas for information during this period. With the wide sweep of this grand jury investigation, it was clear that Maloney was aware it was pending when he spoke with Swano in the summer of 1990. In fact, Swano told him at the time that 'I hear they are trying to put a tax case on you.' Finally, Roby testified that in August of 1990, he was served by the FBI with a subpoena to appear before the grand jury to testify about his allegations that his case before Judge Maloney had been fixed, thus indicating that the grand jury proceeding was indeed still pending when Maloney had his second 'standing tall' conversation with Swano. It is well established that investigations undertaken with the intention of presenting evidence before a grand jury are sufficient to constitute 'the due administration of justice' under sec. 1503. *US v. McComb*, 744 F.2d 555, 561 (7th Cir. 1984)."

"It is well established that a grand jury investigation constitutes a pending judicial proceeding for purposes of § 1503. However, a government agency's investigation--such as the FBI's--that is separate and apart from the court's or the grand jury's authority does not constitute a "judicial proceeding." (citing *Aguilar*, 515US@599). In order to establish that an

> FBI investigation constituted a 'judicial proceeding' for purposes of §1503, the government must establish that the FBI, at the time in question, was acting as an aid to and as an 'arm of the grand jury' when it conducted its investigation, i.e., that it undertook the investigation to supply information to the grand jury on this issue in direct support of a grand jury investigation. To establish that the FBI was acting as an arm of the grand jury, the government must demonstrate that the FBI agents were 'integrally involved' in the grand jury investigation, *Fassnacht*, 332 F.3d at 449 (quoting *US v. Furkin*, 119F.3d1276, 1282-83 (7th Cir. 1997)), and that the FBI's investigation of Local 110's activities was 'undertaken with the intention of presenting evidence before [the] grand jury,' *US. V. Maloney*, 71 F.3d645, 657(7th Cir. 1995) (citing *US v. McComb*, 744F.2d555, 561(7th Cir. 1984))." *US v. Macari*, 453 F.3d 926 (7th Cir. 2006).

Williams' proposition that a plea overrides a claim of inadequate representation, which was sole basis for that plea, and constitutes waiver of an "actual innocence" claim is dizzying in its illogical circularity! Simply, an attorney cannot have met the standard of adequate representation established in *Strickland v. Washington*, 466 US 668 (1984), who misadvises his client that innocent, momentary words constitutes the crime of obstructing a non-existent grand jury, participates in furthering a deception with prosecutor and judge, advises him that his New Zealand Big Game Hunt before probation will not violate his pre-trial conditions, and then misrepresents, and mischaracterizes and demeans him in sentencing allocution based on Christ's very

netting in the trap Gimbel had laid for Christ by Gimbel's inadequate and false representation.

Christ satisfied the two-prong test of *Strickland v. Washington*,466US668,688-94(1984) by showing that his 'counsel's actions were not supported by a reasonable strategy and that the error was prejudicial.' *Massaro v. United States*,538US500(2003);citing *Strickland*, 466US@688-94. Pleading guilty where conduct cannot possibly support a crime cannot be a reasonable strategy, as to which there can be no greater prejudice.

That "the motion, files, and records of the case conclusively show[ing] that [Christ] is entitled to no relief" (which Judge Williams asserts in the concluding paragraph of her opinion) is belied by Christ's 2255 Motion (which sets forth numerous egregious violations of the US Constitution, applicable law, and procedure), the case files, and the case records (which did not show that a grand jury was sitting, an omission which Randa, Biskupic, and Williams fail to acknowledge).

Williams cites *Cooper* which is factually and legally so distinguishable from Christ as to render it inapplicable. Unlike Christ,

> "Cooper failed to offer the district court any objective facts outside the trial record that would warrant an evidentiary hearing. He did not call into question our conclusion on direct appeal that trial counsel made a clear strategic decision to refrain from objecting to the government's use of the tip and that his counsel used the details of the tip as part of his theory of defense that he had been set up."

Cooper wanted to employ the "woman scorned" defense to raise doubts that his possession of cocaine had not been a set-up, a trial strategy he must have

thought viable until it failed. It did not warrant accusation of constitutionally inadequate representation in a 2255. No such impediment faced Christ. Pleading guilty to a non-crime, based upon a few words that could not possibly have obstructed a grand jury investigation, even if there were one, is not a viable strategy. At the very least, Christ's assertion that there was no grand jury to obstruct, required review beyond the "trial record." Truly, Randa was the Chief Judge at the time that any grand jury would have been appointed, and therefore, presumably, might have been familiar with any grand jury for which agent Sparacino was investigating, but that was no part of any "trial record" to which Christ had access. Randa likely was a witness to be called at an evidentiary hearing. Whether there was such a grand jury was a matter for exploration in the 2255 proceeding, and, most definitely, an evidentiary presentation and hearing, in the absence of confession by Biskupic or Randa that there was no such grand jury! In addition, Christ's 2255 said his few words to Sparacino were not false, that its possible impact on a grand jury was nil, and that his few words were dissipated within a very few minutes in their conversation so that it did not even have an impact on the agent, let alone any grand jury that the agent might have been servicing. Williams' assertion that Christ's record conclusively showed no entitlement to relief is preposterous. The exact opposite is true.

The 6th Amendment applies to Christ. Williams asserts that Christ has no 6th Amendment rights because *Blakely* and *Booker* occurred after his sentencing and are not to be given retroactive application according to *McReynolds v. U.S.*, 307F.3d479 (7th Cir. 2005).

> "[O]ur decision in *McReynolds v. United States,* 397 F.3d 479 (7th Cir. 2005), forecloses Torzala's argument that he should receive the benefit of *United States v. Booker,* 543US220(2005), in this collateral challenge."

This is egregious error as it ignores the two century old 6th Amendment and *Apprendi*, which was decided previous to Christ's 2255; retroactivity is not an issue here therefor.

Contrary to Williams' assertion, *McReynolds v. US*, 397F.3d479(7th Cir. 2005) forecloses nothing to Christ. Christ makes clear in his Initial Brief that there is no issue of retroactivity since the complained of violation, Randa's consideration of aggravating factors not agreed in the plea agreement in violation of the *Shepard v. U.S.*, 544 US 13(2005) adjunct to the 6th Amendment right to trial by jury [Christ's Initial Brief, p. 6], had occurred **well after** *Jones v. U.S.*, 526US227(1999) and *Apprendi v. New Jersey*, 530 US460(2000) [Christ's Initial Brief @p.23], even though *Blakely v. Washington*, 534US296(2004) (which merely acknowledged the application of the 6th Amendment to Federal Guideline-like Washington State sentencing) and *Booker v. U.S.*, 535US220 (2005) (which also acknowledged the application of the 6th Amendment to the Federal Sentencing Guidelines, but with a left-handed twist that preserved them from unconstitutionality) had not been decided by then, totally ignoring that the 6th Amendment had been around for two centuries, except for its period of improper suppression by *McMillan v. Pennsylvania*, 477US79 (1986). "Since retroactivity is not an issue, Randa's (and Williams') reliance on *McReynolds* which is based on *Schriro v. Summerlin*, 542US348 (2004), is unjustified.

Not only the issue of retroactivity, but all Williams arguments against granting Christ the relief he requested and that justice and judicial integrity demand were definitively dispatched in Christ's Reply Brief. Apparently, Williams adopted all US' arguments as her own without regard to their invalidity and dispatch by Christ! The Supreme Court should set this right. Justice and judicial integrity demand it!

WHEREFORE APPELLANT CHRIST PRAYS that the Supreme Court grant this Petition for Writ of Certiorari so that Judge Williams' opinion may be substituted by one that is true to the facts and the law and is judicious and just.

Respectfully Submitted,

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Attorney for Christopher M. Torzala